

BEFORE THE SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

RUSSELL DAVIS & ROLAND  
CULBERTSON,

Appellants,

v.

DALE HOOVER & MASON COUNTY,  
and DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 89-59

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of the approval of a Shoreline Conditional Use Permit, came on for hearing before the Board on June 13, 1990, in Belfair, Washington. Present for the Board were: Members Harold S. Zimmerman, presiding; Gordon Crandall, Judith A. Bendor, Chair; and Nancy Burnett.

M. Karlynn Haberly, attorney at law, represented the appellants, Russell Davis and Roland Culbertson; Malachy Murphy, attorney at law, represented the respondent Dale Hoover; Michael Clift, Mason County deputy prosecuting attorney, represented Mason County. The Department of Ecology did not appear. The proceedings were reported by Bibi Carter of Gene Barker and Associates.

Witnesses were sworn and testified. Exhibits were admitted and examined. From the testimony heard and exhibits examined, the Board makes the following:

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(1)

1 FINDINGS OF FACT

2 I

3 Hoover purchased Lot No. 13 of Clifton Beach Tracts, in Mason  
4 County along the north shore of Hood Canal, in 1988. Davis and  
5 Culbertson are Hoover's neighbors and adjacent lot owners. Davis  
6 resides on Lot No. 12 and the west 1/2 of Lot No. 11, immediately to  
7 the east of the Hoover lot. Culbertson owns and maintains a dwelling  
8 on Lot No. 27 of Cady's Pebble Beach Tracts to the west. Davis and  
9 Culbertson have used Lot No. 13 for storage and parking over several  
10 years.

11 II

12 Hoover's property, as well as that of Davis and Culbertson, is  
13 designated Urban Residential in the Mason County Shoreline Master Plan  
14 (SMP). Hood Canal is a shoreline of statewide significance. The  
15 beach in front of the lots in question is identified in the Coastal  
16 Zone Atlas as being in a state of equilibrium. It is a no-bank beach  
17 with a natural berm formed at the ordinary high water mark.

18 III

19 Hoover originally applied to Mason County in 1988 for a  
20 substantial development permit to place approximately three hundred  
21 twenty (320) cubic yards of fill and to construct approximately two  
22 hundred ten (210) feet of retaining wall. This bulkhead was designed  
23 to hold the fill and to protect the lot from occasional tidal  
24 intrusion. A determination of non-significance (DNS) with respect to  
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1 that permit application was issued on July 11, 1988. The original  
2 permit application was denied by Mason County because of the proposed  
3 bulkhead and the possibility that it could result in a change to the  
4 natural beach in front of the adjacent lots.

5 IV

6 Hoover then scaled down the proposal, responding to the expressed  
7 concerns of the County. The revised proposal now is for a conditional  
8 use for 320 cubic yards of fill, with no retaining wall or bulkhead.  
9 Approximately the same amount of fill is proposed, but it would be  
10 sloped and contoured to provide drainage for the upland. The fill  
11 would raise the lot elevation from 12.5' to approximately 15' above  
12 sea level around the concrete house foundation and would match the  
13 contour of Davis' property adjacent to the east. The area would also  
14 be seeded and landscaped to prevent erosion. A conditional use was  
15 required pursuant to Section 7.16.130 of the Mason County Shoreline  
16 Master Program for landfill incident to a nonwater-dependent use.  
17 (See also: MATRIX Ch. .7.16.)

18 V

19 Mason County examined the new permit application and authorized a  
20 conditional use permit on August 1, 1989. DOE approved the permit on  
21 September 12, 1989, as required by WAC 173-14-130. The permit was  
22 approved subject to three conditions:

- 23 1. *The fill will be appropriately sloped and*  
24 *vegetated to prevent erosion;*

1 2. If the fill should begin to erode away, erosion  
2 control measures must be taken;  
3 3. Also the design septic system is subject to approval  
4 by the Board of Health.

## 5 VI

6 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
7 adopted as such.

8 From these Findings of Fact, the Board makes the following

### 9 CONCLUSIONS OF LAW

#### 10 I

11 The Board has jurisdiction over the parties and the subject  
12 matter of this appeal. RCW 90.58.180.

#### 13 II

14 The Board reviews the proposal for consistency with the Mason  
15 County Shorelines Master Program (SMA) and the Shoreline Management  
16 Act (SMA).

#### 17 III

18 An application for a conditional use permit is governed by Sec.  
19 17.28.010 of the Mason County SMP, which provides in pertinent part as  
20 follows:

21 *The purpose of a Conditional Use Permit is to allow*  
22 *greater flexibility in varying the new application of the*  
23 *Use Regulations of the Master Program. Conditional Use*  
24 *Permits should also be granted in circumstances where*  
25 *denial of the permit would result in a thwarting of the*  
26 *policy enumerated in RCW 90.58.020.*

27 Conditional uses may be granted under Mason County's SMP  
provided that the applicant can demonstrate all of the

1 following:

- 2 1. That the proposed use will be consistent with the
- 3 policies of 90.58 RCW and policies of the Shoreline
- 4 Master Program;
- 5 2. That the proposed use will not interfere with the
- 6 normal public use of the shorelines;
- 7 3. That the proposed use of the site and design of the
- 8 project will be compatible with outer permitted uses
- 9 within the area;
- 10 4. That the proposed use will cause no unreasonable
- 11 adverse effect to the shoreline environmental in which
- 12 it is to be located.
- 13 5. That the public interest suffers no substantial
- 14 detrimental effect.

15 IV

16 The conditional use permit, as conditioned by Mason County,  
17 satisfies the criteria for approval. Fill to raise the level of this  
18 upland lot so that it will be usable for a single family residence is  
19 consistent with the policies of the SMA and the Mason County SMP.  
20 Such fill will not interfere with the normal public use of the  
21 shorelines, and the proposed use of the site (single family residence)  
22 will be compatible with adjacent single family residences. No adverse  
23 effect to the shoreline environment will result, and the public  
24 interest will suffer no substantial detrimental effect from the fill.

25 V

26 Lot 13 is not located in a floodway or floodplain, although the  
27 lot has been inundated with tidal flooding from time to time. A  
floodway, is defined in the Mason County SMP as:

those portions of the area of a river valley lying  
streamward from the outer limits of the watercourse

upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually . . .

and a floodplain is defined as:

that area susceptible to being inunundated by stream derived waters with a one percent chance of being equaled or exceeded in any given year.

Both definitions refer to stream and/or river derived waters. There is no evidence that the occasional flooding of this site is caused by such water. Therefore, Section 7.16.080 of the Shoreline Master Program which allows landfill in flood hazard areas only for flood protection of a structure has no application to the case.

## VI

Davis and Culbertson also contend that the Board should vacate the action approving the conditional use permit to fill on lot 13 because the lot has less than the minimum required lot area and the Mason County SMP requires in such cases that a permit for on-site sewage which meets all current codes for setbacks and sizing has been granted by the Environmental Health Section, and that all side yard and shore yard setbacks can be met.

This issue is not properly before the Board. RCW 90.58.180 provides that any person aggrieved by the granting, denying or rescinding of a permit on shorelines of the state pursuant to RCW 90.54.140 may seek review by the Shorelines Hearings Board. Under the

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1 facts of this case, only the shoreline conditional use permit  
2 authorizing the fill is the subject of this appeal, and we have dealt  
3 with that issue in Conclusion IV.

4 VII

5 Any Finding of Fact deemed to be a Conclusion of Law is hereby  
6 adopted as such.

7 From these Conclusions of Law, the Board enters the following  
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26 FINAL FINDINGS OF FACT,  
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ORDER

Approval by Mason County and the Department of Ecology of Conditional Use Permit No. 89-08 to use 320 cubic yards of fill to raise the lot elevation from 12.5' to approximately 15' above sea level around a proposed concrete house foundation on Lot 13, Clifton Beach Tracts, Division 3, subject to the conditions referred to in Finding No. V is hereby AFFIRMED.

Dated this 13<sup>th</sup> day of Sept., 1990.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Presiding

Judith A. Bendor  
JUDITH A. BENDOR, Chair

Nancy Burnett  
NANCY BURNETT, Member

Gordon Crandall  
GORDON CRANDALL, Member

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